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Raymond Lillback

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EXAMINER

FOX, JOHN C

ART UNIT

PAPER NUMBER

3753

MAIL DATE

DELIVERY MODE

10/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Applicant's arguments filed October 8, 2010 have been fully considered but they are not persuasive.

Applicant relies on the opinions expressed in the Declaration by Keith E. Brown. However, while Mr. Brown's qualifications as an engineer are established, his qualification in interpreting claim language in a pending patent application is not established. Being a named inventor on 7 patents is not, in itself, evidence of experience in or knowledge of patent examining or interpreting claim language.

The claim recitations relating to fluid treatment are sufficiently broad to be met by the heating of the water disclosed by Gold, or by cooling of the water after it has been heated. The claim does not call out a water softener or water filter. Mr. Brown opines that "a heating system is not a water treatment device", see paragraph 11, penultimate sentence. Yet page 1, lines 20+ of the specification gives a hot water tank as an example of a water treatment device.

Mr. Brown opines that Gold does not disclose a cylindrical wall and that webs 24-27 are seats. However, under 102 the elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Both Gold and the claimed valve are cylindrical plug valves. They are closely constrained by cylindrical cavities of the valve bodies to rotate on a single axis. The cavities of the valve bodies form both seats and walls. It is inherent to almost every plug valve known. Merely calling the instant cavities walls is not evidence that Gold does not anticipate.

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Mr. Brown opines that Gold does not teach a flow path as recited in paragraph (i) of claim 6, and that fluid cannot flow into and out of chamber 40 simultaneously. However, the claim recites a flow path, and does not specify that flow occurs at any particular time. There is no question that the recited flow path is shown in Gold. That is all that the claim recites, so Gold is fairly seen as anticipating.

Mr. Brown opines that Bergman does not show a fluid treatment device and then notes that water treatment might be different than fluid treatment. Bergman certainly is connected to a fluid treatment device, since fluid flows to and from the Bergman valve to a furnace. The confusion in the claim about what a water treatment device is as opposed to a fluid treatment device, and whether they are supposed to be the same device or not, does not give rise to a patentable step in the art. Further, since the furnace disclosed by Bergman can be used with water, the rejection is still seen to be proper.

Mr. Brown opines that the cylindrical plug valve of Bergman does not include a cylindrical wall. The Examiner notes that the instant drawings are not compared to the Prior Art, but the claim language is compared to the Prior Art, and, as with Gold, believes that the cylindrical cavity of Bergman fairly stands as both a seat and a wall.

Mr. Brown confuses the wall openings to the ports of Bergman with the openings in 16 to the chamber region of Bergman. No evidence that the claims are allowable can be discerned from such a confused argument.

Mr. Brown notes that “the Examiner does not point to any structure in the Bergman patent that corresponds to the transfer chamber, the chamber region, etc.” Mr.

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Brown's attention is directed to the Office Action of December 18, 2009, and to the precept that Applicant's have a duty to make a good faith effort to advance the prosecution of the case.

Lastly, Mr. Brown points to the convertible feature of the disclosed device. However, Mr. Brown fails to point to any claim language relating to this feature. It is the claim language which is examined and compared to the Prior Art. Perhaps a person with experience in patent law and in interpreting the claim language in pending patent applications could address the issues this case.

For the above reasons, the rejections are still seen to be proper and will be maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fox whose telephone number is 571-272-4912. The examiner can normally be reached on Monday-Saturday from 10am-6pm (Hoteling Program).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Hepperle can be reached on 571-272-4913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Fox/
Primary Examiner
Art Unit 3753